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# Frost Brown Todd<sup>LLC</sup>

ATTORNEYS

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August 27, 2004

**VIA FACSIMILE**  
**and REGULAR MAIL**

Robert W. Cinque, Esq.  
Cinque & Cinque, P.C.  
845 Third Avenue  
New York, NY 10022

**Re: The Kroger Co. v. Malease Foods Corp.**

Dear Bob:

I am in receipt of your voice mail message of August 24, 2004 and letter of August 24, 2004 which was received in my office while I was out of town on business. I understand your client is refusing to close despite Judge Beckwith's recent Order. Therefore, we will proceed accordingly. Thank you for your prompt response.

Very truly yours,

FROST BROWN TODD LLC

  
\_\_\_\_\_  
Scott D. Phillips

SDP:rs

CinLibrary 1429665v.1

bcc: P. Parmele (w/attachment)  
W.R. Wilson (w/attachment)  
D. Dennis (w/attachment)

**SDP's VOICE MAIL FOR 8/24/04 @ 5 p.m.**

8/24/04 @ 5 p.m.

Hello, Scott, this is Bob Cinque, at 5 p.m. I received your letter, I'm at 212-759-5515. We are reviewing all options with the client on this but we will not have a closing soon. I mean the client has to make certain decisions about an appeal once the Order becomes final on the jurisdictional grounds as well as on the summary judgment grounds. We also have the open issue of, you know, we're making that motion which we promise to make before the end of the month. So there's a whole bunch of issues in this case that have to be resolved, you know, prior to what you're talking about here in closing. So, if you'd like to discuss it further, just me a holler, but I did want to let you know as I said, too many things are open and there is a strong possibility the client will instruct us to file an appeal at the appropriate time on the jurisdictional ground as well as on the grant of summary judgment, the denial of our motion, and depending on what happens with the other motions, so we've got a whole bunch of things going on. But I hope the summer is being good to you and that's what it is. But I did want to let you know cause I'm in and out myself. Take care, buddy.